

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STEVEN TILCHEN,

Plaintiff,

-against-

CEMD ELEVATOR CORP. d/b/a CITY ELEVATOR,
MITCHELL HELLMAN, STEPHAN DIEMER, CARL
ALONGIS and KONE, INC.,

Defendants.
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Case No.: 1:17-CV-00051 (PAC)

DECLARATION OF
DOUGLAS E. ROWE, ESQ.

Hon. Paul A. Crotty

DOUGLAS E. ROWE, an attorney admitted to practice in the United States District Court for the Southern District of New York, declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, as follows:

1. The undersigned is a partner with the law firm of Certilman Balin Adler & Hyman, LLP, attorneys for Plaintiff, STEVEN TILCHEN ("Plaintiff"), in the above-captioned action, and as such, is fully familiar with the facts and circumstances set forth herein.

2. This declaration is being submitted in support of Plaintiff's instant motion pursuant to Federal Rule of Civil Procedure 15 (a)(2) for leave to amend Plaintiff's Second Amended Complaint. A true and correct copy of Plaintiff's Second Amended Complaint is attached hereto as Exhibit A.

3. A true and correct copy of Plaintiff's commission agreement with Defendants CEMD City Elevator Corp. d/b/a City Elevator ("City Elevator"), Mitchell Hellman ("Hellman"), Stephan Diemer ("Diemer"), and Carl Alongis ("Alongis")(collectively the "CEMD Defendants") is annexed hereto as Exhibit B.

4. A true and correct of Plaintiff's maintenance, repair, modernization, and new installation logs are collectively attached hereto as Exhibit C.

5. A true and correct copy of Plaintiff's proposed Third Amended Complaint is attached hereto as Exhibit D.

6. A true and correct copy of a redlined document showing the difference between Plaintiff's Second Amended Complaint and proposed Third Amended Complaint is attached hereto as Exhibit E.

7. A true and correct copy of the first complaint filed in this action is attached hereto as Exhibit F.

8. A true and correct copy of Plaintiff's Amended Complaint is attached hereto as Exhibit G.

9. A true and correct copy of a check stub to Plaintiff bearing out the payment of commissions to Plaintiff is attached hereto as Exhibit H.

10. A true and correct copy of excerpts from the deposition transcript of Plaintiff's November 17, 2017 deposition is attached hereto as Exhibit I.

11. A true and correct copy of Plaintiff's counsel's July 7, 2017 letter to the Court is attached hereto as Exhibit J.

12. A true and correct copy of excerpts from the deposition transcript of Hellman's November 21, 2017 deposition is attached hereto as Exhibit K.

13. A true and correct copy of excerpts from the deposition transcript of Diemer's January 4, 2018 deposition is attached hereto as Exhibit L.

14. A true and correct copy of excerpts from the deposition transcript of Alongis' January 5, 2018 deposition is attached hereto as Exhibit M.

15. A true and correct copy of excerpts from the deposition transcript of Justin Thomasino's February 13, 2018 deposition is attached hereto as Exhibit N.

16. A true and correct copy of excerpts from the deposition transcript of Anthony Santiago's March 9, 2018 deposition transcript is attached hereto as Exhibit O. Notably, during the deposition of Anthony Santiago I advised counsel for the CEMD Defendants' that Plaintiff would be seeking to amend his Second Amended Complaint to add a breach of contract claim that would track Plaintiff's labor law claims. At the time, the CEMD Defendants' counsel advised that such an amendment would not be a problem. Contrary to said representation, on March 29, 2018, after the CEMD Defendants were provided with Plaintiff's proposed amendments, I was advised by the CEMD Defendants' counsel that said Defendants would not consent to Plaintiff's proposed amendments.

17. A true and correct copy of excerpts from the deposition transcript of Andrew Koontz Jr.'s March 20, 2018 deposition is attached hereto as Exhibit P.

18. A true and correct copy of the CEMD Defendants' January 8, 2018, first set of requests for admissions to Plaintiff is attached hereto as Exhibit Q.

19. A true and correct copy of the CEMD Defendants' February 20, 2018 fourth request for documents and second set of interrogatories to Plaintiff is attached hereto as Exhibit R.

20. For the reasons set forth in Plaintiff's accompanying declaration and the Plaintiff's accompanying Memorandum of Law, Plaintiff's instant motion seeking, *inter alia*, to amend his second amended complaint should be granted in its entirety.

DATED: East Meadow, New York
April 17, 2018

CERTILMAN BALIN ALDER & HYMAN, LLP

By: 
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